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CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1393

**Introduced by Assembly Member Bates
(Coauthors: Assembly Members Correa, Garcia, Mountjoy,
Strickland, and Wolk)**

February 21, 2003

An act to amend Sections ~~4646.5 and 4648~~ *4648 and 4648.1* of the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1393, as amended, Bates. Developmental services: regional centers: vendorization.

Under the Lanterman Developmental Disabilities Services Act, the State Department of Developmental Services is authorized to contract with regional centers to provide support and services to individuals with developmental disabilities. Under existing law, the regional centers purchase needed services *and supports* for individuals with developmental disabilities through approved service providers or arrange for their provision through other publicly funded agencies.

Existing law provides for a vendorization or contracting process, by which regional centers identify, select, and utilize service vendors.

Existing law requires the Director of Developmental Services to adopt regulations governing the vendorization process.

This bill would declare the intent of the Legislature to revise the vendorization process in order to give support to regional centers that meet local needs and offer high-quality services and supports. The bill would require the ~~director~~ department to adopt regulations specifying the process to be used in determining the need for services and supports within a regional center area, would require the regulations to address special factors, and would require the purchase of services and supports by a regional center to be consistent with these factors.

Existing law provides for the adoption of specified procedures to provide opportunities for children with developmental disabilities to live with their families, including, among others, vouchers and alternative respite and child care options.

The bill would exempt *specified persons* from these vendorization requirements ~~families arranging services for a developmentally disabled family member pursuant to a specified provision of law.~~

This bill would also prohibit regional centers from using these requirements to revoke vendor status from those providers that are vendorized prior to January 1, 2004.

Existing law authorizes the department and regional centers to monitor services and supports purchased for regional center consumers. Existing law authorizes regional centers to establish volunteer teams to conduct the monitoring activities.

This bill would require that these monitoring activities include specified criteria.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares that the
2 current process by which regional centers vendorize
3 community-based service providers is burdensome for both the
4 regional center and for providers, that it has not increased the range
5 of services and supports to provide consumers and families a
6 meaningful choice in service providers, that it has resulted in an
7 overabundance of some types of services and supports, and that it
8 has not enhanced the quality of existing services and supports.



(b) It is therefore the intent of the Legislature to revise the law and regulations relating to the vendorization process to give support to regional centers that meet local needs and offer high-quality services and supports.

~~SEC. 2. Section 4646.5 of the Welfare and Institutions Code is amended to read:~~

~~4646.5. (a) The planning process for the individual program plan described in Section 4646 shall include all of the following:~~

~~(1) Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. For children with developmental disabilities, this process should include a review of the strengths, preferences, and needs of the child and the family unit as a whole. Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible. Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, providers of services and supports, and other agencies. The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family.~~

~~(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals.~~

~~(3) When developing individual program plans for children, regional centers shall be guided by the principles, process, and services and support parameters set forth in Section 4685.~~

~~(4) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the~~

~~provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The purchase of services and supports shall be consistent with the factors identified in subparagraph (D) of paragraph (3) of subdivision (a) of Section 4648. The plan shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services.~~

~~(5) When agreed to by the consumer, the parents or legally appointed guardian of a minor consumer, or the legally appointed conservator of an adult consumer or the authorized representative, including those appointed pursuant to Section 4590 and subdivision (c) of Section 4705, a review of the general health status of the adult or child including a medical, dental, and mental health needs shall be conducted. This review shall include a discussion of current medications, any observed side effects, and the date of last review of the medication. Service providers shall cooperate with the planning team to provide any information necessary to complete the health status review. If any concerns are noted during the review, referrals shall be made to regional center clinicians or to the consumer's physician, as appropriate. Documentation of health status and referrals shall be made in the consumer's record by the service coordinator.~~

~~(6) A schedule of regular periodic review and reevaluation to ascertain that planned services have been provided, that objectives have been fulfilled within the times specified, and that consumers and families are satisfied with the individual program plan and its implementation.~~

~~(b) For all active cases, individual program plans shall be reviewed and modified by the planning team, through the process described in Section 4646, as necessary, in response to the person's achievement or changing needs, and no less often than once every three years. If the consumer or, where appropriate, the consumer's parents, legal guardian, or conservator requests an individual program plan review, the individual program shall be reviewed within 30 days after the request is submitted.~~

~~(c) (1) The department, with the participation of representatives of a statewide consumer organization, the Association of Regional Center Agencies, an organized labor~~

~~organization representing service coordination staff, and the Organization of Area Boards shall prepare training material and a standard format and instructions for the preparation of individual program plans, which embodies an approach centered on the person and family.~~

~~(2) Each regional center shall use the training materials and format prepared by the department pursuant to paragraph (1).~~

~~(3) The department shall biennially review a random sample of individual program plans at each regional center to assure that these plans are being developed and modified in compliance with Section 4646 and this section.~~

~~SEC. 3.—~~

SEC. 2. Section 4648 of the Welfare and Institutions Code is amended to read:

4648. In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

(2) In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency that the regional center and consumer or, where appropriate, his or her parents, legal guardian, or

1 conservator, or authorized representatives, determine will best
2 accomplish all or any part of that consumer's program plan.

3 (A) Vendorization or contracting is the process for
4 identification, selection, and utilization of service vendors or
5 contractors, based on the qualifications and other requirements
6 necessary in order to provide the service.

7 (B) A regional center may reimburse an individual or agency
8 for services or supports provided to a regional center consumer if
9 the individual or agency has a rate of payment for vendored or
10 contracted services established by the department, pursuant to this
11 division, and is providing services pursuant to an emergency
12 vendorization or has completed the vendorization procedures or
13 has entered into a contract with the regional center and continues
14 to comply with the vendorization or contracting requirements. The
15 director shall adopt regulations governing the vendorization
16 process to be utilized by the department, regional centers, vendors
17 and the individual or agency requesting vendorization.

18 (C) Regulations shall include, but not be limited to: the vendor
19 application process, and the basis for accepting or denying an
20 application; the qualification and requirements for each category
21 of services that may be provided to a regional center consumer
22 through a vendor; requirements for emergency vendorization;
23 procedures for termination of vendorization; the procedure for an
24 individual or an agency to appeal any vendorization decision made
25 by the department or regional center.

26 (D) In order to ensure uniformity in the application of the
27 vendorization process, ~~the director~~ *enhance the quality of services*
28 *and supports for persons with developmental disabilities, and*
29 *maintain a sufficient array and number of service providers so that*
30 *consumers can exercise a meaningful choice among providers, the*
31 *department* shall adopt regulations setting forth the process to be
32 used in determining the need for services and supports within a
33 regional center area. The regulations shall address the following:

34 (i) The prospective vendor's potential for providing
35 cost-effective quality services and supports as referenced in the
36 program design.

37 (ii) The degree to which consumer choice regarding the
38 provision of services ~~and supports is identified as a factor,~~
39 *supports, and integration into natural community environments*
40 *are identified as factors* in the program design.

1 (iii) The experience of the vendor or vendor's key personnel in
2 providing the same or comparable services *and supports*.

3 (iv) The reasonableness of the prospective vendor overhead, *as*
4 *compared to other providers of comparable services and supports*
5 *in the community*.

6 ~~(v) The capability of the regional center to monitor and~~
7 ~~evaluate the prospective vendor.~~

8 ~~(vi) The need for the service.~~

9 ~~(vii)~~

10 (v) *The need for services, defined as the outcome of the*
11 *Individual Program Plan process pursuant to Section 4646.5 and*
12 *subdivisions (a) and (b) of Section 4646.*

13 (vi) *The ability of a consumer, and where appropriate, his or*
14 *her parents, legal guardian or conservator, or authorized*
15 *representative, to request a specific service provider be*
16 *vendorized, pursuant to all regulatory requirements.*

17 (vii) *A prohibition that ensures regional centers may not*
18 *require prospective vendors to agree to terms and conditions not*
19 *generally required of vendors or that do not relate to the services*
20 *and supports to be provided.*

21 (viii) Provision of a financial statement and budget that
22 demonstrate the vendor's ability to cover operating costs and
23 provide the necessary level of services and supports to regional
24 center consumers.

25 (ix) *The process by which vendor applications may be denied*
26 *pursuant to this section.*

27 (E) Families arranging services for a family member pursuant
28 to paragraph (3) of subdivision (c) of Section 4685, *consumers,*
29 *families in self-determination projects, and persons employed by*
30 *these family members, consumers, or families in*
31 *self-determination projects,* shall be exempt from the
32 vendorization criteria established by the regulations adopted
33 pursuant to subparagraph (D).

34 (F) *Vendors not required to provide a program design or*
35 *participate in a service plan shall be exempt from these*
36 *vendorization criteria.*

37 (G) *Regional centers may not use this section to revoke vendor*
38 *status from those providers that are vendorized prior to January 1,*
39 *2004.*

(H) A regional center may vendorize a licensed facility for exclusive services to persons with developmental disabilities at a capacity equal to or less than the facility's licensed capacity. A facility already licensed on January 1, 1999, shall continue to be vendorized at their full licensed capacity until the facility agrees to vendorization at a reduced capacity. *Regulations shall ensure that vendorization requirements do not conflict with requirements that may be established by a licensing agency.*

(4) Notwithstanding subparagraph (B), a regional center may contract or issue a voucher for services and supports provided to a consumer or family at a cost not to exceed the maximum rate of payment for that service or support established by the department. If a rate has not been established by the department, the regional center may, for an interim period, contract for a specified service or support with, and establish a rate of payment for, any provider of the service or support necessary to implement a consumer's individual program plan. Contracts may be negotiated for a period of up to three years, with annual review and subject to the availability of funds.

(5) In order to ensure the maximum flexibility and availability of appropriate services and supports for persons with developmental disabilities, the department shall establish and maintain an equitable system of payment to providers of services and supports identified as necessary to the implementation of a consumer's individual program plan. The system of payment shall include provision for a rate to ensure that the provider can meet the special needs of consumers and provide quality services and supports in the least restrictive setting as required by law.

(6) The regional center and the consumer, or where appropriate, his or her parents, legal guardian, conservator, or authorized representative, including those appointed pursuant to Section 4590 or subdivision (e) of Section 4705, shall, pursuant to the individual program plan, consider all of the following when selecting a provider of consumer services and supports:

(A) A provider's ability to deliver quality services or supports which can accomplish all or part of the consumer's individual program plan.

(B) A provider's success in achieving the objectives set forth in the individual program plan.

1 (C) Where appropriate, the existence of licensing,
2 accreditation, or professional certification.

3 (D) The cost of providing services or supports of comparable
4 quality by different providers, if available.

5 (E) The consumer's or, where appropriate, the parents, legal
6 guardian, or conservator of a consumer's choice of providers.

7 (7) No service or support provided by any agency or individual
8 shall be continued unless the consumer or, where appropriate, his
9 or her parents, legal guardian, or conservator, or authorized
10 representative, including those appointed pursuant to Section
11 4590 or subdivision (e) of Section 4705, is satisfied and the
12 regional center and the consumer or, when appropriate, the
13 person's parents or legal guardian or conservator agree that
14 planned services and supports have been provided, and reasonable
15 progress toward objectives have been made.

16 (8) Regional center funds shall not be used to supplant the
17 budget of any agency that has a legal responsibility to serve all
18 members of the general public and is receiving public funds for
19 providing those services.

20 (9) (A) A regional center may, directly or through an agency
21 acting on behalf of the center, provide placement in, purchase of,
22 or follow-along services to persons with developmental
23 disabilities in, appropriate community living arrangements,
24 including, but not limited to, support services for consumers in
25 homes they own or lease, foster family placements, health care
26 facilities, and licensed community care facilities. In considering
27 appropriate placement alternatives for children with
28 developmental disabilities, approval by the child's parent or legal
29 guardian shall be obtained before placement is made.

30 (B) Each person with developmental disabilities placed by the
31 regional center in a community living arrangement shall have the
32 rights specified in this division. These rights shall be brought to the
33 person's attention by any means necessary to reasonably
34 communicate these rights to each resident, provided that, at a
35 minimum, the Director of Developmental Services shall prepare,
36 provide, and require to be clearly posted in all residential facilities
37 and day programs a poster using simplified language and pictures
38 that is designed to be more understandable by persons with
39 cognitive disabilities and that the rights information shall also be
40 available through the regional center to each residential facility

1 and day program in alternative formats, including, but not limited
2 to, other languages, braille, and audiotapes, when necessary to
3 meet the communication needs of consumers.

4 (C) Consumers are eligible to receive supplemental services,
5 including, but not limited to, additional staffing, pursuant to the
6 process described in subdivision (d) of Section 4646. Necessary
7 additional staffing that is not specifically included in the rates paid
8 to the service provider may be purchased by the regional center if
9 the additional staff ~~are~~ *is* in excess of the number required by
10 regulation and the individual's planning team determines the
11 additional services are consistent with the provisions of the
12 individual program plan. Additional staff should be periodically
13 reviewed by the planning team for consistency with the individual
14 program plan objectives in order to determine if continued use of
15 the additional staff is necessary and appropriate and if the service
16 is producing outcomes consistent with the individual program
17 plan. Regional centers shall monitor programs to ensure that the
18 additional staff is being provided and utilized appropriately.

19 (10) Emergency and crisis intervention services, including, but
20 not limited to, mental health services and behavior modification
21 services, may be provided, as needed, to maintain persons with
22 developmental disabilities in the living arrangement of their own
23 choice. Crisis services shall first be provided without disrupting a
24 person's living arrangement. If crisis intervention services are
25 unsuccessful, emergency housing shall be available in the person's
26 home community. If dislocation cannot be avoided, every effort
27 shall be made to return the person to his or her living arrangement
28 of choice, with all necessary supports, as soon as possible.

29 (11) Among other service and support options, planning teams
30 shall consider the use of paid roommates or neighbors, personal
31 assistance, technical and financial assistance, and all other service
32 and support options which would result in greater self-sufficiency
33 for the consumer and cost-effectiveness to the state.

34 (12) When facilitation as specified in an individual program
35 plan requires the services of an individual, the facilitator shall be
36 of the consumer's choosing.

37 (13) The community support may be provided to assist
38 individuals with developmental disabilities to fully participate in
39 community and civic life, including, but not limited to, programs,
40 services, work opportunities, business, and activities available to



1 persons without disabilities. This facilitation shall include, but not
2 be limited to, any of the following:

3 (A) Outreach and education to programs and services within
4 the community.

5 (B) Direct support to individuals that would enable them to
6 more fully participate in their community.

7 (C) Developing unpaid natural supports when possible.

8 (14) Other services and supports may be provided as set forth
9 in Sections 4685, 4686, 4687, 4688, and 4689, when necessary.

10 (b) (1) Advocacy for, and protection of, the civil, legal, and
11 service rights of persons with developmental disabilities as
12 established in this division.

13 (2) Whenever the advocacy efforts of a regional center to
14 secure or protect the civil, legal, or service rights of any of its
15 consumers prove ineffective, the regional center or the person with
16 developmental disabilities or his or her parents, legal guardian, or
17 other representative may request the area board to initiate action
18 under the provisions defining area board advocacy functions
19 established in this division.

20 (c) The regional center may assist consumers and families
21 directly, or through a provider, in identifying and building circles
22 of support within the community.

23 (d) In order to increase the quality of community services and
24 protect consumers, the regional center shall, when appropriate,
25 take either of the following actions:

26 (1) Identify services and supports that are ineffective or of poor
27 quality and provide or secure consultation, training, or technical
28 assistance services for any agency or individual provider to assist
29 that agency or individual provider in upgrading the quality of
30 services or supports.

31 (2) Identify providers of services or supports that may not be
32 in compliance with local, state, and federal statutes and regulations
33 and notify the appropriate licensing or regulatory authority, or
34 request the area board to investigate the possible noncompliance.

35 (e) When necessary to expand the availability of needed
36 services of good quality, a regional center may take actions that
37 include, but are not limited to, the following:

38 (1) Soliciting an individual or agency by requests for proposals
39 or other means, to provide needed services or supports not
40 presently available.

(2) Requesting funds from the Program Development Fund, pursuant to Section 4677, or community placement plan funds designated from that fund, to reimburse the startup costs needed to initiate a new program of services and supports.

(3) Using creative and innovative service delivery models, including, but not limited to, natural supports.

(f) Except in emergency situations, a regional center shall not provide direct treatment and therapeutic services, but shall utilize appropriate public and private community agencies and service providers to obtain those services for its consumers.

(g) Where there are identified gaps in the system of services and supports or where there are identified consumers for whom no provider will provide services and supports contained in his or her individual program plan, the department may provide the services and supports directly.

SEC. 3. Section 4648.1 of the Welfare and Institutions Code is amended to read:

4648.1. (a) The State Department of Developmental Services and regional centers may monitor services and supports purchased for regional center consumers with or without prior notice. Not less than two monitoring visits to a licensed long-term health care or community care facility or family home agency home each year shall be unannounced. The department may conduct fiscal reviews and audits of the service providers' records.

(b) Department and regional center staff involved in monitoring or auditing services provided to the regional centers' consumers by a service provider shall have access to the provider's grounds, buildings, and service program, and to all related records, including books, papers, computerized data, accounting records, and related documentation. All persons connected with the service provider's program, including, but not limited to, program administrators, staff, consultants, and accountants, shall provide information and access to facilities as required by the department or regional center.

(c) The department, in cooperation with regional centers, shall ensure that all providers of services and supports purchased by regional centers for their consumers are informed of all of the following:

(1) The provisions of this section.

1 (2) The responsibility of providers to comply with laws and
2 regulations governing both their service program and the
3 provision of services and supports to people with developmental
4 disabilities.

5 (3) The responsibility of providers to comply with conditions
6 of any contract or agreement between the regional center and the
7 provider, and between the provider and the department.

8 (4) The rights of providers established in regulations adopted
9 pursuant to Sections 4648.2, 4748, and 4780.5, to appeal actions
10 taken by regional centers or the department as a result of their
11 monitoring and auditing findings.

12 (d) A regional center may terminate payments for services, and
13 may terminate its contract or authorization for the purchase of
14 consumer services if it determines that the provider has not
15 complied with provisions of its contract or authorization with the
16 regional center or with applicable state laws and regulations.
17 When terminating payments for services or its contract or
18 authorization for the purchase of consumer services, a regional
19 center shall make reasonable efforts to avoid unnecessary
20 disruptions of consumer services.

21 (e) A regional center or the department may recover from the
22 provider funds paid for services when the department or the
23 regional center determines that either of the following has
24 occurred:

25 (1) The services were not provided in accordance with the
26 regional center's contract or authorization with the provider, or
27 with applicable state laws or regulations.

28 (2) The rate paid is based on inaccurate data submitted by the
29 provider on a provider cost statement.

30 Any funds so recovered shall be remitted to the department.

31 (f) Any evidence of suspected licensing violations found by
32 department or regional center personnel shall be reported
33 immediately to the appropriate state licensing agency.

34 (g) Regional centers may establish volunteer teams, made up of
35 consumers, parents, other family members, and advocates to
36 conduct the monitoring activities described in this section. *These*
37 *monitoring activities shall include consideration of the criteria set*
38 *forth in subparagraph (D) of paragraph (3) of subdivision (a) of*
39 *Section 4648.*

1 (h) In meeting its responsibility to provide technical assistance
2 to providers of community living arrangements for persons with
3 developmental disabilities, including, but not limited to, licensed
4 residential facilities, family home agencies, and supported or
5 independent living arrangements, a regional center shall utilize the
6 “Looking at Service Quality-Provider’s Handbook” developed
7 by the department or subsequent revisions developed by the
8 department.

